

Soft drinks do not qualify for the low rate of tax that is afforded certain food items. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

May 1, 2002

Dear Xxxxx:

This letter is in response to your letter that we received on February 22, 2002. Because you state in your letter that your company is under audit, we must decline your request to issue a Private Letter Ruling. See 2 Ill. Adm. Code 1200.110(a)(4). Instead we are responding with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We are requesting a private letter ruling concerning several consumer items sold to retail customers at our ABC. stores. We are inquiring about the Retailers' Occupation Tax that should be applied on the sale of certain items.

The first item is **garden seeds that produce edible food** (i.e. squash, tomatoes, beans). Is the correct tax 6.25% (general merchandise) or 1% (qualifying food, drugs, and medical appliances)? We believe that the seeds should be taxed at the general merchandise rate.

The second item is complete, finished, ready-to-use, non-alcoholic, carbonated or non-carbonated **beverages that contain tea**.

The third item is complete, finished, ready-to-use, non-alcoholic, carbonated or non-carbonated **beverages that contain coffee**.

I have included examples of labels that are typical of these types of beverages. Please note that the primary ingredient is not always tea or coffee and some products have juice flavoring(s) added. Would these items be considered "soft drinks" or qualifying food as are tea and coffee? We believe that these items are qualifying food and sales tax should be applied accordingly at 1%.

The tax period at issue is July 2001 forward. Currently, there is a sales tax audit being conducted by the Illinois Department of Revenue for the tax period January 1999 through June 2001.

There are no contracts, agreements, instruments or other documents relevant to this request.

To the best of our knowledge the department has not ruled upon on these issues and we have not submitted these issues before.

There are no trade secrets to delete from the publicly disseminated version of this letter.

Please refer to the enclosed copy of 86 Ill. Adm. Code 130.310, "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sales of food can be subject to either low (1%) or high (6.25%) rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made.

Regarding your first question about garden seeds, please be advised that Section 2-10 of the Retailers' Occupation Tax Act only allows the reduced rate of tax for food sold for human consumption that is to be consumed off the premises where it is sold, other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption, 35 ILCS 120/2-10. The Department regulation states that food is any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, 86 Ill. Adm. Code 130.310(b)(1). Based upon these authorities, we are required to conclude that garden seeds do not qualify for the reduced rate of tax. They are subject to the full 6.25% State rate, plus any applicable local taxes. This is true even though such items have the potential to produce food.

Your second and third items concern whether certain beverages are to be taxed as soft drinks. As you are aware, if such items were "soft drinks," their sale would be subject to the full rate. The applicable statutory language defines a soft drink to mean:

*"any complete, finished, ready-to-use, non-alcoholic drink, whether carbonated or not, including but not limited to soda water, cola, fruit juice, vegetable juice, carbonated water, and all other preparations commonly known as soft drinks of whatever kind or description that are contained in any closed or sealed bottle, can, carton, or container, regardless of size. "Soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products as defined in the Grade A Pasteurized Milk and Milk Products Act, or drinks containing 50% or more natural fruit or vegetable juice" 35 ILCS 120/2-10.*

We have examined the product labels that you submitted for the beverages that contain tea or coffee. We note that for the Snapple Iced Tea, the Arizona Green Tea and the Arizona Herbal Iced Tea, the principal ingredient is the tea. Similarly, the prime ingredient of the Starbucks Frappuccino product is the coffee. As a general proposition, products such as these qualify as either tea or coffee subject to the low rate.

The Kona Café product has as its primary ingredient organic cocoa, and its secondary and tertiary ingredients are organic milk and coffee. As noted above, milk products, including chocolate milk, qualify for the low rate. In general, products whose ingredients are primarily composed of milk, coffee and cocoa would qualify for the low rate of tax.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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Enc.